SPEECH

OF

SENATOR DOUGLAS, OF ILLINOIS,

ON THE

PRESIDENT'S MESSAGE,

DELIVERED

IN THE SENATE OF THE UNITED STATES,

DECEMBER 9, 1857.

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On motion of Mr. DOUGLAS, the Senate resumed the consideration of the motion made by him yesterday, to print the President's message and accompanying documents, with fifteen thousand extra copies.

Mr. DOUGLAS said:

Mr. PRESIDENT: When yesterday the President's message was read at the Clerk's desk, I heard it but imperfectly, and I was of the impression that the President of the United States had approved and indorsed the action of the Lecompton convention in Kansas. Under that impression, I felt it my duty to state that, while I concurred in the general views of the message, yet, so far as it approved or indorsed the action of that convention, I entirely dissented from it, and would avail myself of an early opportunity to state my reasons for my dissent. Upon a more careful and critical examination of the message, I am rejoiced to find that the President of the United States has not recommended that Congress shall pass a law to receive Kansas into the Union under the constitution formed at Lecompton. It is true that the tone of the message indicates a willingness on the part of the President to sign a bill, if we shall see proper to pass one, receiving Kansas into the Union under that constitution. But, sir, it is a fact of great significance, and worthy of consideration, that the President has refrained from any indorsement of the convention, and from any recommendation as to the course Congress should pursue with regard to the constitution there formed.

The message of the President has made an argument—an unanswerable argument in my opinion—against that constitution, which shows clearly, whether intended to arrive at the result or not, that, consistently with his views and his principles, he cannot accept that constitution. He has expressed his deep mortification and disappointment that the constitution itself has not been submitted to the people of Kansas for their acceptance or rejection. He informs us that he has unqualifiedly expressed his opinions on that subject in his instructions to Governor Walker, assuming, as a matter of course, that the constitution was to be submitted to the people before it could have any vitality or validity. He goes further, and tells us that the example set by Congress in the Minnesota case, by inserting a clause in the enabling act requiring the constitution to be submitted to the people, ought to become a uniform rule, not to be departed from hereafter in any case. On these various propositions I agree entirely with the President of the United States, and I am prepared now to sustain that uniform rule which he asks us to pursue, in all other cases, by taking the Minnesota provision as our example.

I rejoice, on a careful perusal of the message, to find so much less to dissent from than I was under the impression there was, from the hasty reading and imperfect hear-

ing of the message in the first instance. In effect, he refers that document to the Congress of the United States—as the Constitution of the United States refers it—for us to decide upon it under our responsibility. It is proper that he should have thus referred it to us as a matter for congressional action, and not as an Administration or Executive measure, for the reason that the Constitution of the United States says that "*Congress* may admit new States into the Union." Hence we find the Kansas question before us now, not, as an Administration measure, not as an Executive measure, but as a measure coming before us for our free action, without any recommendation or interference, directly or indirectly, by the Administration now in possession of the Federal Government. Sir, I propose to examine this question calmly and fairly, to see whether or not we can properly receive Kansas into the Union with the constitution formed at Lecompton.

The President, after expressing his regret and mortification and disappointment, that the constitution had not been submitted to the people in pursuance of his instructions to Governor Walker, and in pursuance of Governor Walker's assurances to the people, says, however, that by the Kansas-Nebraska act the slavery question only was required to be referred to the people, and the remainder of the constitution was not thus required to be submitted. He acknowledges that, as a general rule, on general principles, the whole constitution should be submitted; but according to his understanding of the organic act of Kansas, there was an imperative obligation to submit the slavery question for their approval or disapproval, but no obligation to submit the entire constitution. In other words, he regards the organic act, the Nebraska bill, as having made an exception of the slavery clause, and provided for the disposition of that question in a mode different from that in which other domestic or local, as contradistinguished from Federal questions, should be decided. Sir, permit me to say, with profound respect for the President of the United States, that I conceive that on this point he has committed a fundamental error, an error which lies at the foundation of his whole argument on this matter. I can well understand how that distinguished statesman came to fall into this error. He was not in the country at the time the Nebraska bill was passed; he was not a party to the controversy and the discussion that took place during its passage. He was then representing the honor and the dignity of the country with great wisdom and distinction at a foreign court. Thus deeply engrossed, his whole energies were absorbed in conducting great diplomatic questions that diverted his attention from the mere territorial questions and discussions then going on in the Senate and the House of Representatives, and before the people at home. Under these circumstances, he may well have fallen into an error, radical and fundamental as it is, in regard to the object of the Nebraska bill and the principle asserted in it.

Now, sir, what was the principle enunciated by the authors and supporters of that bill when it was brought forward? Did we not come before the country and say that we repealed the Missouri restriction for the purpose of substituting and carrying out as a general rule the great principle of self-government, which left the people of each State and each Territory free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States? In support of that proposition, it was argued here, and I have argued it wherever I have spoken in various States of the Union, at home and abroad, every where I have endeavored to prove that there was no reason why an exception should be made in regard to the slavery question. I have appealed to the people if we did not all agree, men of all parties, that all other local and domestic questions, should be submitted to the people. I said to them, "We agree that the people shall decide for themselves what kind of a judiciary system they will have; we agree that the people shall decide what kind of a school system they will establish; we agree that the people shall determine for themselves what kind of a banking system they will have, or whether they will have any banks at all; we agree that the people may decide for themselves what shall be the elective franchise in their respective States; they shall decide for themselves what shall be the rule of taxation and the principle upon which their finances shall be regulated; we agree that they may decide for themselves the relations between husband and

wife, parent and child, guardian and ward; and why should we not then allow them to decide for themselves the relations between master and servant? Why make an exception of the slavery question by taking it out of that great rule of self-government which applies to all the other relations of life?" The very first proposition in the Nebraska bill was to show that the Missouri restriction, prohibiting the people from deciding the slavery question for themselves, constituted an exception to a general rule, in violation of the principle of self-government, and hence that that exception should be repealed, and the slavery question, like all other questions, submitted to the people to be decided for themselves.

Sir, that was the principle on which the Nebraska bill was defended by its friends. Instead of making the slavery question an exception, it removed an odious exception which before existed. Its whole object was to abolish that odious exception, and make the rule general, universal, in its application to all matters which were local and domestic, and not national or Federal. For this reason was the language employed which the President has quoted; that the eighth section of the Missouri act, commonly called the Missouri compromise, was repealed because it was repugnant to the principle of non-intervention established by the compromise measures of 1850, "it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States." We repeale the Missouri restriction because that was confined to slavery. That was the only exception there was to the general principle of self-government. That exception was taken away for the avowed and express purpose of making the rule of self-government general and universal, so that the people should form and regulate all their domestic institutions in their own way.

Sir, what would this boasted principle of popular sovereignty have been worth, if it applied only to the negro, and did not extend to the white man? Do you think we could have aroused the sympathies and the patriotism of this broad Republic, and have carried the presidential election last year in the face of a tremendous opposition, on the principle of extending the right of self-government to the negro question, but denying it as to all the relations affecting white men? No, sir. We aroused the patriotism of the country and carried the election in defence of that great principle, which allowed all white men to form and regulate their domestic institutions to suit themselves—institutions applicable to white men as well as to black men—institutions applicable to freemen as well as to slaves—institutions concerning all the relations of life, and not the mere paltry exception of the slavery question. Sir, I have spent too much strength and breath, and health, too, to establish this great principle in the popular heart, now to see it fritted away by bringing it down to an exception that applies to the negro, and does not extend to the benefit of the white man. As I said before, I can well imagine how the distinguished and eminent patriot and statesman now at the head of the Government fell into the error—for error it is, radical, fundamental—and, if persevered in, subversive of that platform upon which he was elevated to the Presidency of the United States.

Then, if the President be right in saying that, by the Nebraska bill, the slavery question must be submitted to the people, it follows inevitably that every other clause of the constitution must also be submitted to the people. The Nebraska bill said that the people should be left "perfectly free to form and regulate their domestic institutions in their own way"—not the slavery question, not the Maine liquor-law question, not the banking question, not the school question, not the railroad question, but "their domestic institutions," meaning each and all the questions which are local, not national, State, not Federal. I arrive at the conclusion that the principles enunciated so boldly, and enforced with so much ability by the President of the United States, require us, out of respect to him and the platform on which he was elected, to send this whole question back to the people of Kansas, and enable them to say whether or not the constitution which has been framed, each and every clause of it, meets their approbation.

The President, in his message, has made an unanswerable argument in favor of the principle which requires this question to be

sent back. It is stated in the message, with more clearness and force than any language which I can command; but I can draw your attention to it and refer you to the argument in the message, hoping that you will take it as a part of my speech—as expressing my idea more forcibly than I am able to express it. The President says that a question of great interest, like the slavery question, cannot be fairly decided by a convention of delegates, for the reason that the delegates are elected in districts, and in some districts a delegate is elected by a small majority; in others by an overwhelming majority, so that it often happens that a majority of the delegates are one way, while a majority of the people are the other way; and therefore it would be unfair and inconsistent with the great principle of popular sovereignty, to allow a body of delegates, not representing the popular voice, to establish domestic institutions for the mass of the people. This is the President's argument to show that you cannot have a fair and honest decision without submitting it the popular vote. The same argument is conclusive with regard to every other question as well as with regard to slavery.

But, Mr. President, it is intimated in the message that although it was an unfortunate circumstance, much to be regretted, that the Lecompton convention did not submit the constitution to the people, yet perhaps it may be treated as regular, because the convention was called by a Territorial legislature which had been repeatedly recognized by the Congress of the United States as a legal body. I beg Senators not to fall into an error as to the President's meaning on this point. He does not say, he does not mean, that this convention had ever been recognized by the Congress of the United States as legal or valid. On the contrary, he knows, as we here know, that during the last Congress I reported a bill from the Committee on Territories to authorize the people of Kansas to assemble and form a constitution for themselves. Subsequently, the Senator from Georgia (Mr. Toombs) brought forward a substitute for my bill, which, after having been modified by him and myself in consultation, was passed by the Senate. It is known in the country as "the Toombs bill." It authorized the people of Kansas Territory to assemble in convention and form a constitution preparatory to their admission into the Union as a State. That bill, it is well known, was defeated in the House of Representatives. It matters not, for the purpose of this argument, what was the reason of its defeat. Whether the reason was a political one; whether it had reference to the then existing contest for the Presidency; whether it was to keep open the slavery question; whether it was a conviction that the bill would not be fairly carried out; whether it was because there were not people enough in Kansas to justify the formation of a State—no matter what the reason was, the House of Representatives refused to pass that bill, and thus denied to the people of Kansas the right to form a constitution and State government at this time. So far from the Congress of the United States having sanctioned or legalized the convention which assembled at Lecompton, it expressly withheld its assent. The assent has not been given, either in express terms or by implication; and being withheld, this Kansas constitution has just such validity and just such authority as the Territorial legislature of Kansas could impart to it without the assent, and in opposition to the known will of Congress.

Now, sir, let me ask what is the extent of the authority of a Territorial legislature as to calling a constitutional convention without the assent of Congress? Fortunately this is not a new question; it does not now arise for the first time. When the Topeka constitution was presented to the Senate nearly two years ago, it was referred to the Committee on Territories, with a variety of measures relating to Kansas. The committee made a full report upon the whole subject. That report reviewed all the irregular cases which had occurred in our history in the admission of new States. The committee acted on the supposition that whenever Congress had passed an enabling act authorizing the people of a Territory to form a State constitution, the convention was regular, and possessed all the authority which Congress had delegated to it; but whenever Congress had failed or refused to pass an enabling act, the proceeding was irregular and void, unless vitality was imparted to it by a subsequent act of Congress adopting and confirming it. The friends of the Topeka constitution insisted

that although their proceedings were irregular, they were not so irregular but that Congress could cure the error by admitting Kansas with that constitution. They cited a variety of cases, amongst others the Arkansas case. In my report, sanctioned by every member of the Committee on Territories, except the Senator from Vermont, (Mr. COLLAMER,) I reviewed the Arkansas case as well as the others, and affirmed the doctrine established by General Jackson's administration and enunciated in the opinion of Mr. Attorney General Butler, a part of which opinion was copied into the report and published to the country at the time.

Now, sir, in order to ascertain what we understood on the 12th of March, 1856—little more than a year and a half ago—to be the true doctrine on this point, let me call your attention to the opinion of Mr. Butler in the Arkansas case. The Governor of the Territory of Arkansas sent a printed address to President Jackson, in which he stated that he had been urged to call together the Legislature of the Territory of Arkansas, for the purpose of allowing them to call a convention to form a constitution, preparatory to their admission into the Union as a State. The Governor stated that, in his opinion, the Legislature had no power to call such a convention without the assent of Congress first had and obtained; but he asked instructions on that point. The President referred the case to the Secretary of State, and he asked for the advice of the Attorney General, whose opinion was given, and adopted, as the plan of action, and communicated to the Governor of Arkansas for his instruction. I will read some extracts from that opinion:

"Consequently, it is not in the power of the General Assembly of Arkansas to pass any law for the purpose of electing members to form a constitution and State government, or to do any other act, directly or indirectly, to create such new government. Every such law, even though it were approved by the Government of the Territory, would be null and void. If passed by them, notwithstanding his veto, by a vote of two-thirds of each branch, it would still be equally void.

"If I am right in the foregoing opinion, it will then follow that the course of the Governor, in declining to call together the Territorial Legislature for the purpose in question, was such as his legal duties required; and that the views he has expressed in his public address, and also in his official communication to yourself, so far as they indicate an intention not to sanction or concur in any legislative or other proceedings towards the formation of a State government until Congress shall have authorized it, are also correct."

That is what I have understood to be the settled doctrine as to the authority of a Territorial Legislature to call a convention without the consent of Congress first had and obtained. The reasoning is very clear and palpable. A Territorial Legislature possesses whatever power its organic act gives it, and no more. The organic act of Arkansas provided that the legislative power should be vested in the Territorial Legislature, the same as the organic act of Kansas, provides that the legislative power and authority shall be vested in the Legislature. But what is the extent of that legislative power? It is to legislate for that Territory under the organic act, and in obedience to it. It does not include any power to subvert the organic act under which it was brought into existence. It has the power to protect it, the power to execute it, the power to carry it into effect; but it has no power to subvert, none to destroy; and hence that power can only be obtained by applying to Congress, the same authority which created the territory itself. But while the Attorney General decided, with the approbation of the administration of General Jackson, that the Territorial Legislature had no power to call a convention, and that its action was void if it did, he went further:

"No law has yet been passed by Congress which either expressly or impliedly gives to the people of Arkansas the authority to form a State government."

Nor has there been any in regard to Kansas. The two cases are alike thus far. They are alike in all particulars so far as the question involving the legality and the validity of the Lecompton convention is concerned. The opinion goes on to say:

"For the reasons above stated, I am, therefore, of opinion that the inhabitants of that Territory have not at present, and that they cannot acquire otherwise than by an act of Congress, the right to form such a government."

General Jackson's administration took the ground that the people of Arkansas, by the authority of the Territorial Legislature, had not the power to hold a convention to form a constitution, and could not acquire it from any source whatever except from Congress. While, therefore, the legis-

lative act of Arkansas was held to be void, so far as it assumed authority to authorize the calling of a convention to form a constitution, yet they did not hold, in those days, that the people could not assemble and frame a constitution in the form of a petition. I will read the rest of the opinion, in order that the Senate may understand precisely what was the doctrine on this subject at that day, and what the Committee on Territories understood to be the doctrine on this subject in March, 1856, when we put forth the Kansas report as embodying what we Nebraska men understood to be our doctrine at that time. Here it is. This was copied into that report:

"But I am not prepared to say that all proceedings on this subject, on the part of the citizens of Arkansas, will be illegal. They undoubtedly possess the ordinary privileges and immunities of citizens of the United States. Among these is the right to assemble and to petition the Government for the redress of grievances. In the exercise of this right, the inhabitants of Arkansas may peaceably meet together in primary assemblies, or in conventions chosen by such assemblies, for the purpose of petitioning Congress to abrogate the territorial government, and to admit them into the Union as an independent State. The particular form which they may give in their petition cannot be material, so long as they confine themselves to the mere right of petitioning, and conduct all their proceedings in a peaceable manner. And as the power of Congress over the whole subject is plenary and unlimited, THEY MAY ACCEPT ANY CONSTITUTION, HOWEVER FRAMED, WHICH IN THEIR JUDGMENT MEETS THE SENSE OF THE PEOPLE TO BE AFFECTED BY IT. If, therefore, the citizens of Arkansas think proper to accompany their petition with a written constitution, framed and agreed on by their primary assemblies, or by a convention of delegates chosen by such assemblies, I perceive no legal objection to their power to do so, nor any measures which may be taken to collect the sense of the people in respect to it; provided, always, that such measures be commenced and prosecuted in a peaceable manner, in strict subordination to the existing territorial government, AND IN ENTIRE SUBSERVIENCY TO THE POWER OF CONGRESS TO ADOPT, REJECT, OR DISREGARD THEM, AT THEIR PLEASURE."

While the Legislature of Arkansas had no power to create a convention to frame a constitution, as a legal constitutional body, yet, if the people chose to assemble under such an act of the Legislature for the purpose of petitioning for redress of grievances, the assemblage was not illegal; it was not an unlawful assemblage; it was not such an assemblage as the military power could be used to disperse, for they had a right under the Constitution thus to assemble and petition. But if they assumed to themselves the right or the power to make a government, that assumption was an act of rebellion which General Jackson said it was his duty to put down with the military force of the country.

If you apply these principles to the Kansas convention, you find that it had no power to do any act as a convention forming a government; you find that the act calling it was null and void from the beginning; you find that the Legislature could confer no power whatever on the convention. That convention was simply an assemblage of peaceable citizens, under the Constitution of the United States, petitioning for the redress of grievances, and, thus assembled, had the right to put their petition in the form of a constitution if they chose; but still it was only a petition—having the force of a petition—which Congress could accept or reject, or dispose of as it saw proper. That is what I understand to be just the extent of the power and authority of this convention assembled at Lecompton. It was not an unlawful assemblage like that held at Topeka; for the Topeka constitution was made in opposition to the territorial law, and, as I thought, intended to subvert the government without the consent of Congress, but, as contended by their friends, not so intended. If their object was to subvert it without the consent of Congress, it was an act of rebellion, which ought to have been put down by force. If it was a peaceable assemblage simply to petition and abide the decision of Congress on the petition, it was not an unlawful assemblage. I hold, however, that it was an unlawful assemblage. I hold that this Lecompton convention was not an unlawful assemblage; but, on the other hand, I hold that they had no legal power and authority to establish a government. They had a right to petition for a redress of grievances. They had a right in that petition to ask for the change of government from a territorial to a State government. They had a right to ask Congress to adopt the instrument which they sent to us as their constitution; and Congress, if it thought that paper embodied the will of the people of the Territory, fairly expressed, might, in its discretion, accept it

as a constitution, and admit them into the Union as a State; or if Congress thought it did not embody the will of the people of Kansas, it might reject it; or if Congress thought it was doubtful whether it did embody the will of the people or not, then it should send it back and submit it to the people to have that doubt removed, in order that the popular voice, whatever it might be, should prevail in the constitution under which that people were to live.

So far as the act of the Territorial Legislature of Kansas calling this convention was concerned, I have always been under the impression that it was fair and just in its provisions. I have always thought the people should have gone together *en masse* and voted for delegates, so that the voice expressed by the convention should have been the unquestioned and united voice of the people of Kansas. I have always thought that those who staid away from that election stood in their own light, and should have gone and voted, and should have furnished their names to be put on the registered list, so as to be voters. I have always held that it was their own fault that they did not thus go and vote; but yet, if they chose, they had a right to stay away. They had a right to say that that convention, although not an unlawful assemblage, is not a legal convention to make a government, and hence we are under no obligation to go and express any opinion about it. They had a right to say, if they chose, "We will stay away until we see the constitution they shall frame, the petition they shall send to Congress; and when they submit it to us for ratification we will vote for it, if we like it, or vote it down if we do not like it." I say they had a right to do either, though I thought, and think yet, as good citizens, they ought to have gone and voted; but that was their business and not mine.

Having thus shown that the Convention at Lecompton had no power, no authority, to form and establish a government, but had power to draft a petition, and that petition, if it embodied the will of the people of Kansas, ought to be taken as such an exposition of their will, yet, if it did not embody their will, ought to be rejected—having shown these facts, let me proceed and inquire what was the understanding of the people of Kansas, when the delegates were elected? I understand, from the history of the transaction, that the people who voted for delegates to the Lecompton Convention, and those who refused to vote—both parties—understood the territorial act to mean that they were to be elected only to frame a constitution, and submit it to the people for their ratification or rejection. I say that both parties in that Territory, at the time of the election of delegates, so understood the object of the Convention. Those who voted for delegates did so with the understanding that they had no power to make a government, but only to frame one for submission; and those who staid away did so with the same understanding.

Now for the evidence. The President of the United States tells us, in his Message, that he had unequivocally expressed his opinions, in the form of instructions to Governor Walker, assuming that the constitution was to be submitted to the people for ratification. When we look into Governor Walker's letter of acceptance of the office of Governor, we find that he stated expressly that he accepted it with the understanding that the President and his whole Cabinet concurred with him, that the constitution, when formed, was to be submitted to the people for ratification. Then look into the instructions given by the President of the United States, through General Cass, the Secretary of State, to Governor Walker, and you there find that the Governor is instructed to use the military power to protect the polls when the constitution shall be submitted to the people of Kansas for their free acceptance or rejection. Trace the history a little further, and you will find that Governor Walker went to Kansas and proclaimed, in his inaugural, and in his speeches at Topeka and elsewhere, that it was the distinct understanding, not only of himself, but of those higher in power than himself—meaning the President and his Cabinet—that the constitution was to be submitted to the people for their free acceptance or rejection, and that he would use all the power at his command to defeat its acceptance by Congress, if it were not thus submitted to the vote of the people.

Mr. President, I am not going to stop and inquire how far the Nebraska bill, which said the people should be left perfectly free to form their constitution for

themselves, authorized the President, or the Cabinet, or Governor Walker, or any other territorial officer, to interfere and tell the Convention of Kansas whether they should, or should not submit the question to the people. I am not going to stop to inquire how far they were authorized to do that, it being my opinion that the spirit of the Nebraska bill required it to be done. It is sufficient for my purpose that the Administration of the Federal Government unanimously, that the administration of the territorial government, in all its parts, unanimously understood the territorial law under which the Convention was assembled to mean that the constitution to be formed by that Convention should be submitted to the people for ratification or rejection; and, if not confirmed by a majority of the people, should be null and void, without coming to Congress for approval.

Not only did the National Government and the territorial government so understand the law at the time, but, as I have already stated, the people of the Territory so understood it. As a further evidence on that point, a large number, if not a majority, of the delegates were instructed in the nominating conventions to submit the constitution to the people for ratification. I know that the delegates from Douglas county, eight in number, Mr. Calhoun, president of the Convention, being among them, were not only instructed thus to submit the question, but they signed and published while candidates, a written pledge that they would submit it to the people for ratification. I know that men, high in authority, and in the confidence of the territorial and National Government, canvassed every part of Kansas during the election of delegates, and each one of them pledged himself to the people that no snap judgment was to be taken; that the constitution was to be submitted to the people for acceptance or rejection; that it would be void unless that was done; that the Administration would spurn and scorn it as a violation of the principles on which it came into power, and that a Democratic Congress would hurl it from their presence as an insult to Democrats who stood pledged to see the people left free to form their domestic institutions for themselves.

Not only that, sir, but up to the time when the Convention assembled, on the 1st of September, so far as I can learn, it was understood everywhere that the constitution was to be submitted for ratification or rejection. They met, however, on the 1st of September, and adjourned until after the October election. I think it was wise and prudent that they should thus have adjourned. They did not wish to bring any question into that election which would divide the Democratic party, and weaken our chances of success in the election. I was rejoiced when I saw that they did adjourn, so as not to show their hand on any question that would divide and distract the party until after the election. During that recess, while the Convention was adjourned, Governor Ransom, the Democratic candidate for Congress, running against the present Delegate from that Territory, was canvassing every part of Kansas in favor of the doctrine of submitting the constitution to the people, declaring that the Democratic party were in favor of such submission, and that it was a slander of the Black Republicans to intimate the charge that the Democratic party did not intend to carry out that pledge in good faith. Thus, up to the time of the meeting of the Convention, in October last, the pretence was kept up, the profession was openly made, and believed by me, and I thought believed by them, that the convention intended to submit a constitution to the people, and not to attempt to put government in operation without such submission. The election being over, the Democratic party being defeated by an overwhelming vote, the Opposition having triumphed, and got possession of both branches of the Legislature, and having elected their territorial Delegate, the Convention assembled, and then proceeded to complete their work.

Now let us stop to inquire how they redeemed the pledge to submit the constitution to the people. They first go on and make a constitution. Then they make a schedule, in which they provide that the constitution, on the 21st of December—the present month—shall be submitted to all the *bona fide* inhabitants of the Territory on that day, for their free acceptance or rejection, in the following manner, to wit: thus acknowledging that they were bound to submit it to the will of the people, conceding that they had no right to put it into operation without submitting it to the peo-

ple, providing in the instrument that it should take effect from and after the date of its ratification, and not before; showing that the constitution derives its vitality, in their estimation, not from the authority of the convention, but from that vote of the people to which it was to be submitted for their acceptance or rejection. How is it to be submitted? It shall be submitted in this form: "Constitution with slavery or constitution with no slavery." All men must vote for the constitution, whether they like it or not, in order to be permitted to vote for or against slavery. Thus a constitution made by a convention that had authority to assemble and petition for a redress of grievances, but not to establish a government—a constitution made under a pledge of honor that it should be submitted to the people before it took effect; a constitution which provides, on its face, that it shall have no validity except what it derives from such submission—is submitted to the people at an election where all men are at liberty to come forward freely without hinderance and vote for it, but no man is permitted to record a vote against it.

That would be as fair an election as some of the enemies of Napoleon attributed to him when he was elected First Consul. He is said to have called out his troops, and had them reviewed by his officers with a speech, patriotic and fair in its professions, in which he said to them: "Now, my soldiers, you are to go to the election and vote freely just as you please. If you vote for Napoleon, all is well; vote against him, and you are to be instantly shot." That was a fair election. (Laughter.) This election is to be equally fair. All men in favor of the constitution may vote for it—all men against it shall not vote at all. Why not let them vote against it? I presume you have asked many a man this question. I have asked a very large number of the gentlemen who framed the constitution, quite a number of delegates, and a still larger number of persons who are their friends, and I have received the same answer from every one of them. I never received any other answer, and I presume we never shall get any other answer. What is that? They say if they allowed a negative vote the constitution would have been voted down by an overwhelming majority, and hence the fellows shall not be allowed to vote at all. (Laughter.)

Mr. President, that may be true. It is no part of my purpose to deny the proposition that that constitution would have been voted down if submitted to the people. I believe it would have been voted down by a majority of four to one. I am informed by men well posted there—Democrats—that it would be voted down by ten to one; some say by twenty to one.

But is it a good reason why you should declare it in force, without being submitted to the people, merely because it would have been voted down by five to one if you had submitted it? What does that fact prove? Does it not show undeniably that an overwhelming majority of people of Kansas are unalterably opposed to that constitution? Will you force it on them against their will simply because they would have voted it down if you had consulted them? If you will, are you going to force it upon them under the plea of leaving them perfectly free to form and regulate their domestic institutions in their own way? Is that the mode in which I am called upon to carry out the principle of self-government and popular sovereignty in the Territories—to force a constitution on the people against their will, in opposition to their protest, with a knowledge of the fact, and then to assign, as a reason for my tyranny, that they would be so obstinate and so perverse as to vote down the constitution if I had given them an opportunity to be consulted about it?

Sir, I deny your right or mine to inquire of these people what their objections to that constitution are. They have a right to judge for themselves whether they like or dislike it. It is no answer to tell me that the constitution is a good one and unobjectionable. It is not satisfactory to me to have the President say in his message that that constitution is an admirable one, like all the constitutions of the new States that have been recently formed. Whether good or bad, whether obnoxious or not, is none of my business and none of yours. It is their business and not ours. I care not what they have in their constitution, so that it suits them and does not violate the Constitution of the United States and the fundamental principles of liberty upon which our institutions rest. I am not go-

ing to argue the question whether the banking system established in that constitution is wise or unwise. It says there shall be no monopolies, but there shall be one bank of issue in the State, with two branches. All I have to say on that point is, if they want a banking system let them have it; if they do not want it let them prohibit it. If they want a bank with two branches, be it so; if they want twenty it is none of my business, and it matters not to me whether one of them shall be on the north side and the other on the south side of the Kaw river, or where they shall be.

While I have no right to expect to be consulted on that point, I do hold that the people of Kansas have the right to be consulted and to decide it, and you have no rightful authority to deprive them of that privilege. It is no justification, in my mind, to say that the provisions for the eligibility for the offices of Governor and Lieutenant Governor requires twenty years' citizenship in the United States. If men think that no person should vote or hold office until he has been here twenty years they have a right to think so; and if a majority of the people of Kansas think that no man of foreign birth should vote or hold office unless he has lived there twenty years, it is their right to say so, and I have no right to interfere with them; it is their business, not mine; but if I lived there I should not be willing to have that provision in the constitution without being heard upon the subject, and allowed to record my protest against it.

I have nothing to say about their system of taxation, in which they have gone back and resorted to the old exploded system that we tried in Illinois, but abandonded because we did not like it. If they wish to try it, and get tired of it, and abandon it, be it so; but if I were a citizen of Kansas I would profit by the experience of Illinois on that subject, and defeat it if I could. Yet I have no objection to their having it if they want it; it is their business, not mine.

So it is in regard to the free negroes. They provide that no free negro shall be permitted *to live* in Kansas. I suppose they have a right to say so if they choose; but if I lived there I should want to vote on that question. We, in Illinois, provide that no more shall come there. We say to the other States, "take care of your own free negroes and we will take care of ours." But we do not say that the negroes now there shall not be permitted to live in Illinois; and I think the people of Kansas ought to have the right to say whether they will allow them to live there, and if they are not going to do so, how they are to dispose of them.

So you may go on with all the different clauses of the constitution. They may be all right; they may be all wrong. That is a question on which my opinion is worth nothing. The opinion of the wise and patriotic Chief Magistrate of the United States is not worth anything as against that of the people of Kansas, for they have a right to judge for themselves; and neither Presidents, nor Senates, nor Houses of Representatives, nor any other power outside of Kansas, has a right to judge for them. Hence it is no justification, in my mind, for the violation of a great principle of self-government, to say that the constitution you are forcing on them is not particularly obnoxious, or is excellent in its provisions.

Perhaps, sir, the same thing might be said of the celebrated Topeka constitution. I do not recollect its peculiar provisions. I know one thing: we Democrats, we Nebraska men, would not even look into it to see what its provisions were. Why? Because we said it was made by a political party, and not by the people; that it was made in defiance of the authority of Congress; that if it was as pure as the Bible, as holy as the ten commandments, yet we would not touch it until it was submitted to and ratified by the people of Kansas, in pursuance of the forms of law. Perhaps that Topeka constitution, but for the mode of making it, would have been unexceptionable. I do not know; I do not care. You have no right to force an unexceptionable constitution on a people. It does not mitigate the evil, it does not diminish the insult, it does not ameliorate the wrong, that you are forcing a good thing on them. I am not willing to be forced to do that which I would do if I were left free to judge and act for myself. Hence I assert that there is no justification to be made for this flagrant violation of popular rights in Kansas, on the plea that the constitution which they have made is not particularly obnoxious.

But, sir, the President of the United States is really and sincerely of the opinion that the slavery clause has been fairly and impartially submitted to the free acceptance or rejection of the people of Kansas, and that, inasmuch as that was the exciting and paramount question, if they get the right to vote as they please on that subject they ought to be satisfied; and possibly it might be better if we would accept it, and put an end to the question. Let me ask, sir, is the slavery clause fairly submitted, so that the people can vote for or against it? Suppose I were a citizen of Kansas, and should go up to the polls and say, "I desire to vote to make Kansas a slave State, here is my ballot." They reply to me, "Mr. Douglas, just vote for that constitution first, if you please." "Oh, no!" I answer, "I cannot vote for that constitution conscientiously. I am opposed to the clause by which you locate certain railroads in such a way as to sacrifice my county and my part of the State. I am opposed to that banking system. I am opposed to this Know Nothing or American clause in the constitution about the qualification for office. I cannot vote for it." Then they answer, "You shall not vote on making it a slave State." I then say, "I want to make it a free State." They reply, "Vote for that constitution first, and then you can vote to make it a free State; otherwise you cannot." Thus they disqualify every free State man who will not first vote for the constitution; they disqualify every slave State man who will not first vote for the constitution. No matter whether or not the voters state that they cannot conscientiously vote for those provisions, they reply, "You cannot vote for or against slavery here. Take the constitution as we have made it, take the elective franchise as we have established it, take the banking system as we have dictated it, take the railroad lines as we have located them, take the judiciary system as we have formed it, take it all, as we have fixed it to suit ourselves, and ask no questions, but vote for it, or you shall not vote either for a slave or free State." In other words, the legal effect of the schedule is this: all those who are in favor of this constitution may vote for or against slavery, as they please; but all those who are against this constitution are disfranchised, and shall not vote at all. That is the mode in which the slavery proposition is submitted. Every man opposed to the constitution is disfranchised on the slavery clause. How many are they? They tell you there is a majority, for they say the constitution will be voted down instantly, by an overwhelming majority, if you allow a negative vote. This shows that a majority are against it. They disqualify and disfranchise every man who is against it, thus referring the slavery clause to a minority of the people of Kansas, and leaving that minority free to vote for or against the slavery clause, as they choose.

Let me ask you if that is a fair mode of submitting the slavery clause? Does that mode of submitting that particular clause leave the people perfectly free to vote for or against slavery as they choose? Am I free to vote as I choose on the slavery question, if you tell me I shall not vote on it until I vote for the Maine liquor law? Am I free to vote on the slavery question, if you tell me that I shall not vote either way until I vote for a bank? Is it freedom of election to make your right to vote upon one question depend upon the mode in which you are going to vote on some other question which has no connection with it? Is that freedom of election? Is that the great fundamental principle of self-government, for which we combined and struggled, in this body and throughout the country, to establish as the rule of action in all time to come?

The President of the United States has made some remarks in his message which it strikes me it would be very appropriate to read in this connection. He says:

"The friends and supporters of the Nebraska and Kansas act, when struggling on a recent occasion to sustain its wise provisions before the great tribunal of the American people, never differed about its true meaning on this subject. Everywhere throughout the Union they publicly pledged their faith and honor that they would cheerfully submit the question of slavery to the decision of the *bona fide* people of Kansas, without any restriction or qualification whatever. All were cordially united upon the great doctrine of popular sovereignty, which is the vital principle of our free institutions."

Mark this:

"Had it, then been insinuated, from any quarter, that it would have been a sufficient compliance with the requisitions of the organic law for the members of a convention, thereafter to be elected, to withhold a question of slavery from the people, and to substitute their own will for

that of a legally ascertained majority of their constituents, this would have been instantly rejected."

Yes, sir, and I will add further, had it been then intimated from any quarter, and believed by the American people, that we would have submitted the slavery clause in such a manner as to compel a man to vote for that which his conscience did not approve, in order to vote on the slavery clause, not only would the idea have been rejected, but the Democratic candidate for the Presidency would have been rejected; and every man who backed him would have been rejected too.

The President tells us in his message that the whole party pledged our faith and our honor that the slavery question should be submitted to the people, without any restriction or qualification whatever. Does this schedule submit it without qualification? It qualifies it by saying, "You may vote on slavery if you will vote for the constitution; but you shall not do so without doing that." That is a very important qualification—a qualification that controls a man's vote, and his action, and his conscience, if he is an honest man—a qualification confessedly in violation of our platform. We are told by the President that our faith and our honor are pledged that the slavery clause should be submitted without qualification of any kind whatever; and now I am to be called upon to forfeit my faith and my honor in order to enable a small minority of the people of Kansas to defraud the majority of that people out of their elective franchise? Sir, my honor is pledged; and before it shall be tarnished, I will take whatever consequences personal to myself may come; but never ask me to do an act which the President, in his message, has said is a forfeiture of faith, a violation of honor, and that merely for the expediency of saving the party. I will go as far as any of you to save the party. I have as much heart in the great cause that binds us together as a party as any man living. I will sacrifice anything short of principle and honor for the peace of the party; but if the party will not stand by its principles, its faith, its pledges, I will stand there, and abide whatever consequences may result from the position.

Let me ask you, why force this constitution down the throats of the people of Kansas in opposition to their wishes, and in violation of our pledges. What great object is to be attained? *Cui bono?* What are you to gain by it? Will you sustain the party by violating its principles? Do you propose to keep the party united by forcing a division? Stand by the doctrine that leaves the people perfectly free to form and regulate their institutions for themselves in their own way, and your party will be united and irresistible in power. Abandon that great principle, and the party is not worth saving, and cannot be saved, after it shall be violated. I trust we are not to be rushed upon this question. Why shall it be done? Who is to be benefitted? Is the South to be the gainer? Is the North to be the gainer? Neither the North nor the South has the right to gain a sectional advantage by trickery or fraud.

But I am beseeched to wait until I hear from the election on the 21st of December. I am told that perhaps that will put it all right, and will save the whole difficulty. How can it? Perhaps there may be a large vote. There may be a large vote returned. [Laughter.] But I deny that it is possible to have a fair vote on the slavery clause; and I say that it is not possible to have any vote on the constitution. Why wait for the mockery of an election when it is provided, unalterably, that the people cannot vote—when the majority are disfranchised?

But I am told on all sides, "Oh, just wait; the pro-slavery clause will be voted down." That does not obviate any of my objections; it does not diminish any of them. You have no more right to force a free-State constitution on Kansas than a slave-State constitution. If Kansas wants a slave-State constitution she has a right to it; if she wants a free-State constitution she has a right to it. It is none of my business which way the slavery clause is decided. I care not whether it is voted down or voted up. Do you suppose, after the pledges of my honor that I would go for that principle and leave the people to vote as they choose, that I would now degrade myself by voting one way if the slavery clause be voted down, and another way if it be voted up? I care not how that vote may stand. I take it for granted that it will be voted out. I think I have seen enough in the last three days to make it certain that it will be returned out, no mat-

tor how the vote may stand. [Laughter.]

Sir, I am opposed to that concern because it looks to me like a system of trickery and jugglery to defeat the fair expression of the will of the people. There is no necessity for crowding this measure, so unfair, so unjust as it is in all its aspects, upon us. Why can we not now do what we proposed to do in the last Congress? We then voted through the Senate an enabling act, called "the Toombs bill," believed to be just and fair in all its provisions, pronounced to be almost perfect by the Senator from New Hampshire, (Mr. HALE,) only he did not like the man, then President of the United States, who would have to make the appointments. Why can we not take that bill, and, out of compliment to the President, add to it a clause taken from the Minnesota act, which he thinks should be a general rule, requiring the constitution to be submitted to the people, and pass that? That unites the party. You all voted, with me, for that bill, at the last Congress. Why not stand by the same bill now? Ignore Lecompton, ignore Topeka, treat both those party movements as irregular and void; pass a fair bill—the one that we framed ourselves when we were acting as a unit; have a fair election, and you will have peace in the Democratic party, and peace throughout the country, in ninety days. The people want a fair vote. They will never be satisfied without it. They never should be satisfied without a fair vote on their constitution.

If the Toombs bill does not suit my friends, take the Minnesota bill of the last session—the one so much commended by the President in his message as a model. Let us pass that as an enabling act, and allow the people of all parties to come together and have a fair vote, and I will go for it. Frame any other bill that secures a fair, honest vote to men of all parties, and carries out the pledge that the people shall be left free to decide on their domestic institutions for themselves, and I will go with you with pleasure, and with all the energy I may possess. But if this constitution is to be forced down our throats, in violation of the fundamental principle of free government, under a mode of submission that is a mockery and insult, I will resist it to the last. I have no fear of any party associations being severed. I should regret any social or political estrangement, even temporarily: but if it must be, if I cannot act with you and preserve my faith any my honor, I will stand on the great principle of popular sovereignty, which declares the right of all people to be left perfectly free to form and regulate their domestic institutions in their own way. I will follow that principle wherever its logical consequences may take me, and I will endeavor to defend it against assault from any and all quarters. No mortal man shall be responsible for my action but myself. By my action I will compromit no man.

[At the conclusion of the honorable gentleman's speech, loud applause and clapping of hands resounded through the crowded galleries.]